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Kunde Enterprises, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KUNDE ENTERPRISES, INC.,

Plaintiff,

v.

NATIONAL SURETY CORPORATION,

Defendant.

CASE NO. 4:19-cv-06636-JSW

**DECLARATION OF DR. RICHARD G.
PETERSON IN SUPPORT OF
PLAINTIFF KUNDE ENTERPRISES,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: May 6, 2022
Time: 9:00 a.m.
Courtroom: 5

Pre-Trial Conference Date: March 14, 2022
Trial Date: May 16, 2022

1 I, Richard G. Peterson, Ph.D., declare as follows:

2 1. I submit this declaration in support of Plaintiff Kunde Enterprises, Inc.’s
3 (“Kunde”) Motion for Partial Summary Judgment against Defendant National Surety, Inc.
4 (“National Surety”). I have sufficient personal knowledge of the facts set forth herein that if
5 called as a witness I could and would testify competently to those facts under oath. In making
6 this declaration, I expressly reserve all privileges and protections.

7 2. I am a consultant in Enology and Viticulture. I received a B.S. in Chemical
8 Technology from Iowa State University in 1952; an M.S. in Food Technology from the
9 University of California, Berkeley, in 1956; and a Ph.D. in Agricultural Chemistry from the
10 University of California in 1958. I have thorough knowledge of wine chemistry and sixty (60)
11 years of professional winegrowing experience, including as Research Director and Assistant
12 Production Manager in charge of winemaking at E&J Gallo Winery; Wine Master at Beaulieu
13 Vineyard at Rutherford in Napa Valley; Wine Master and President of The Monterey Vineyard;
14 and Wine Master and President of Atlas Peak Vineyard.

15 3. I have been a professional member of the American Society for Enology and
16 Viticulture since 1959, a Director (1973 – 1975), and its President (1977 – 1978). I was a long-
17 time director of the Wine Institute, Chairman of WITS, a Supreme Knight in the Universal Order
18 of Knights of the Vine, and a member of most professional wine societies, including: Les Amis
19 du Vin, International Wine and Food Society, W.I.N.O., Confrerie de la Chaine des Rotisseurs,
20 Napa Valley Wine Technical Group, Institute of Food Technologists, and a founding member of
21 the American Institute of Wine and Food, AWARE, Society of Wine Educators, and the
22 International Wine Academy.

23 4. I have read the March 6, 2019 report prepared for National Surety by Philip
24 Crews, Ph.D., titled “Analysis of Smoke Taint Effects to Kunde Premium Wines from 2017
25 Wildfires in Northern California” (the “Crews Report”). In it, Dr. Crews states the following
26 with respect to the smoke tainted Kunde wines made from grapes harvested before the wildfires
27 began (the “Watch List” wines):
28

1 It is not clear how or why the smoke taint occurred to these lots but it must have taken
2 place from smoke putatively filling the Kunde winery production area during and after
the wildfires (10/8-17) while these wines were in production

3 (Crews Report at KUNDE0000277.)

4 5. Dr. Crews' conclusion that smoke exposure in Kunde's facilities caused smoke
5 taint to the Watch List wines does not surprise me. New wine in process (vulnerable to smoke
6 taint) is not protected from smoke that contaminates a winery's fermenting areas. It is not
7 possible to close and seal up a winery's indoor fermenting areas since the buildup of CO2 inside
8 a building is deadly for workers. Any smoke in the winery will easily contact new wine during
9 the processing and fermentation period. The smoke in the winery contacts grapes and new wines
10 while the grapes are being crushed, moved from the crushers to tanks for fermentation, and when
11 the wines are pressed after fermentation. It also contacts the fermenting wines, including during
12 "pump overs" which take place with red wines at least two times per day during fermentation.

13 6. On the other hand, Dr. Crews' conclusion that smoke tainting to Kunde wines
14 made from grapes harvested after the wildfires began (the "Fire Lot" wines) resulted from smoke
15 taint to grapes on the vine does surprise me as I see no basis for it. Putting aside scientific
16 debates as to whether and to what extent smoke compounds can penetrate wine skins on the vine,
17 to my understanding, none of the grapes used to make the Fire Lot wines ever tested positive for
18 any significant amount of smoke compounds. So, Dr. Crews' conclusion is mere speculation.
19 Moreover, it is methodologically improper for Dr. Crews to simply disregard the exposure to
20 smoke compounds in Kunde's facilities for the Fire Lot wines (while acknowledging it for the
21 Watch List wines). Finally, there is no way of differentiating between smoke taint to wine
22 caused by smoke exposure in Kunde's facilities versus any smoke taint to wine that may have
23 resulted from any smoke damage to grapes on the vine.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed in Napa,
25 California on February 16, 2022.

26 
27 Richard G. Peterson, Ph.D.
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